

REMARKS

Applicant respectfully requests consideration of the following remarks.

Rejections Under 35 U.S.C. § 102

In the December 19, 2005 office action, claims 1-30 stand rejected under 35 U.S.C. 102(b) as being anticipated by Banker et al. (5,477,262)(hereinafter ‘Banker’). The office action asserts that Banker discloses a method and apparatus including “providing access to television programming to enable a customer of a broker . . . to *create a custom channel . . . including at least one television program . . . selected from the television programming*”, (office action, page 3, paragraph 1)(emphasis provided). A proper rejection under 35 USC 102(b) requires that “the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States”.

Applicant respectfully disagree that Banker meets this requirement.

The office action asserts that Banker discloses a “custom channel created by the customer (col. 17, lines 54-59)”, (office action, page 3, paragraph 1). However, Banker says nothing about creating a custom channel:

The FAVORITE key is a key previously labeled the RCL key, or recall key, in the known Scientific-Atlanta Model 8590 cable television terminal. When the terminal is in the On mode and the FAVORITE key actuated, the microprocessor **310** recalls the next favorite channel in a list of favorite channels the user has established in terminal memory and causes demodulating and descrambling circuit **304** to tune to that channel, (col. 17, lines 52-59).

In this section cited in the office action, Banker discloses that a list of favorite channels is established in terminal memory, and actuating the ‘FAVORITE’ key simply causes the microprocessor to tune to the next ‘FAVORITE’ channel in the saved list of

‘FAVORITE’ channels. This is also clearly outlined in the ‘Summary of the Invention’ section:

It is a still further object of the invention to provide a favorite channel feature in a subscription television terminal. In this manner, a subscriber may establish a list in terminal memory of favorite channels, and, consequently, gain access to them quickly by actuation of a favorite channel key of a subscriber input device, (col. 4, lines 21-26).

Contrary to the office action, Banker does not describe a “custom channel created by the customer” and “including at least one television program selected from the television programming”, as recited in applicant’s independent claims. In fact, Banker doesn’t discuss or describe a ‘television program’ at all. Rather, Banker simply describes saving a list of channels into memory, then tuning from channel to channel by pushing a button. The channels are existing subscription television channels, for example, the Disney channel (col. 18, line 60) provided through a ‘subscription television terminal’, not custom channels created by a customer.

Likewise, the assertion in the office action that, “Banker further discloses simultaneously transmitting to the viewer the custom channel and at least one other custom channel (col. 22, line 27 – col. 23, line 33)”, misconstrues the disclosure of Banker. Banker states: “[f]or example, fifteen favorite channels may be saved in a favorite channel memory”, (col. 23, lines 1-2), “according to OSD **10a** of FIG. 15B, currently tuned channel 42 blinks” (col 23, lines 16-17), and, “[o]ne can also directly access a channel for storage in favorite channel memory of terminal **300**” (col. 23, lines 19-21). These passages show that numerous channels may be saved into a memory, and that the user may tune to the channels, but fails to disclose transmitting custom channels that have been created by the customer.

For at least the reasons provided here, Banker fails to disclose the recited limitations in each of the independent claims shown below:

Claim 1: "...transmitting from the broker to the customer the custom channel including the at least one television program, the *custom channel created by the customer.*"

Claim 6: "...*a custom channel created by the customer*; and transmitting the custom channel including the at least one selected television program from the broker to the customer."

Claim 9: "...generating custom channel data for *a custom channel created by the customer*, the custom channel data identifying the at least one selected television program..."

Claim 12: "...the custom channel data identifying selected television programming for at least one *custom channel created by the customer*; and transmitting to the customer the at least one custom channel including at least one television program selected from the television programming."

Claim 15: "...adding the at least one selected television program and the selected time to a custom channel, *the custom channel created by a customer.*"

Claim 18: "...the transmitter to transmit from the broker to the customer *the custom channel created by the customer*, the custom channel including the at least one television program."

Claim 24: "...a controller to generate custom channel data for *the custom channel created by the customer*, the custom channel data identifying the at least one selected television program..."

Claim 28: "...transmit from the broker to the customer *the custom channel created by the customer* and including the at least one television program selected from the television programming."

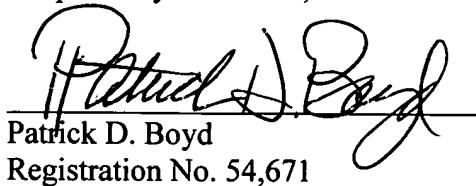
For at least the reason that Banker fails to disclose a custom channel created by the customer, the custom channel including at least one television program, applicant respectfully submits that Banker fails to disclose at least the recited claim limitations in each of the independent claims shown above. Therefore, the asserted 35 USC 102(b) rejections of independent claims 1, 6, 9, 12, 15, 18, 24 and 28 are without proper basis, and applicant respectfully requests withdrawal of the rejections. Inasmuch as dependent claims 2-5, 7-8, 10-11, 13-14, 16-17, 19-23, 25-27 and 28-30 depend from and include the limitations in independent claims 1, 6, 9, 12, 15, 18, 24 and 28, respectively, applicant also requests withdrawal of the rejections from the dependent claims.

CONCLUSION

In light of the points and arguments set forth herein, applicant respectfully submits that the rejections have been properly overcome, and all claims are allowable as originally presented.

Please charge any shortages and credit any overages to Deposit Account No. 02-2666.

Respectfully submitted,



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